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cooperation of all will be essential if the pollution caused by the dumping of wastes in the ocean is to be dealt with effectively and comprehensively.

JOSEPH R. JOHN

International Law—Oil Spills and Their Legal Ramifications

Historically, man has demonstrated an unfortunate tendency to become the victim of his own technological achievements. Nowhere has this inability to cope with progress been more apparent than in the exploitation and shipment of oil. Although oil is the lifeblood of our industrialized society, it has the potential to devastate both the ecology and the economy. This realization has recently exploded in the context of increasing domestic and international concern in the wake of the *Torrey Canyon* incident and the blowout in the Santa Barbara Channel. Although the issues have been brought into sharp focus by these events, practical solutions are not yet available. At best, these tragedies have only served to point out the painful inadequacy of existing legislative and conventional authority in the area of oil spills and their legal ramifications.

THE EXTENT OF THE THREAT

The events surrounding the sinking of the *Torrey Canyon* in March, 1967, supplied much of the impetus for the present level of public concern. The problem of oil pollution, however, is neither new nor limited to such spectacular events. Reports date back to 1754, when the Russians added another "first" to their long series of exploits by becoming the first to pollute the sea with oil.¹ In that case a portion of the Caspian Sea off Baku was defiled by the leakage of a quantity of bulk oil cargo in wooden bottoms. Even before industry's conversion from steam to oil—the point at which many commentators believe oil pollution became a major concern²—domestic legislation seeking to counteract the threat was already in existence.³ Nevertheless, it took two

¹Stubbs, *Oil Pollution: Penalty and Damage Aspects*, 16 U.S.N. JAG J. 140 (1962).

²Nanda, *The "Torrey Canyon" Disaster: Some Legal Aspects*, 44 DENVER L.J. 400, 406 (1967) [hereinafter cited as Nanda].

³*E.g.*, Act of Aug. 5, 1886, ch. 929, § 3, 24 Stat. 329. Even though the Act did not specifically prohibit the dumping of oil in New York harbor, subsequent laws with similar wording have been construed to prohibit such discharges. See *The S.S. Nea Hellis*, 116 F.2d 803, 806 (2d Cir. 1941).

world wars and half a century of technological progress to bring the problem into its true perspective.

Today, tankers carry over 700 million tons of petroleum and petroleum products annually.⁴ Their number, though representing forty percent of the world ocean traffic,⁵ is far less significant than their individual capacities. While the standard tankers of two decades ago averaged 16,000 deadweight tons,⁶ their modern progeny commonly exceed 100,000 tons.⁷ With the recent launching of the 312,000 ton *Universe Ireland*, even tankers of this latter class may be destined for obsolescence.⁸

It was almost inevitable that a tragedy reflecting these technological advances would eventually occur. That fear became reality on March 18, 1967, when the 118,000 ton *Torrey Canyon* ran aground on the Seven Stones reef off the coast of Cornwall, England. Driven by strong winds and high seas, the oil dispersed across the channel, killed thousands of seabirds and millions of fish, and contaminated oyster beds, fisheries, and one hundred forty miles of the Cornish coast.⁹

Although claims growing out of the disaster may run as high as two billion dollars,¹⁰ the true cost cannot be measured monetarily. In terms of detrimental effects on the environment, and particularly on the chain of marine life, the extent of the damage, if known, would stagger the imagination.

Surprisingly, such tragedies, however dramatic, are not the primary

⁴Edwards, *Oil Pollution and the Law*, in OIL POLLUTION: PROBLEMS AND POLICIES 21, 23 (S. Degler ed. 1969) [hereinafter cited as Edwards].

⁵Nanda 01-02.

⁶Ludwigson, *Oil Pollution at Sea*, in OIL POLLUTION: PROBLEMS AND POLICIES 1 (S. Degler ed. 1969) [hereinafter cited as Ludwigson].

⁷*Id.* Most of the progress in this area is directly attributable to the American petroleum industry, which, in attempting to meet the demands of the post-war recovery in Western Europe and Japan, discovered the economies of scale. In terms of capital outlay and operating and administrative costs, today's "supertankers" are far more economical than their smaller ancestors. E. COWAN, OIL AND WATER: THE TORREY CANYON DISASTER 11-14 (1968).

⁸See Ludwigson 8.

⁹Nanda 400. Restorative efforts were largely ineffectual. Attempts to set the oil afire with napalm, powdered magnesium and other incendiary weapons met with little success, as the rising steam quickly snuffed out the flames. Similarly, floating booms and other methods of physical collection proved difficult due to the localized heavy seas. Once the oil reached shore, the British made generous use of detergents, but this too had to be discontinued because of the effect on the marine life. Ludwigson 3-4.

¹⁰Ludwigson 4. Excluding private claims, suits by the British and French governments totaled sixteen million dollars. *Id.*

cause of oil pollution.¹¹ Instead, the bulk of such discharges are preventable. Bilge pumping, ballast dumping and carelessness in shoreside fueling operations account for a large part of the estimated 100 million tons of oil spilled into the sea annually.¹²

The oil spill in the Santa Barbara Channel illustrates that man's impatience to secure the benefits of his discoveries without first investigating the possible hazards is not limited to the shipment of oil alone. In that instance, the federal sale of petroleum leases had brought the largest total amount,¹³ the largest amount for a single tract,¹⁴ and the highest per acre bid¹⁵ ever for an offshore lease-sale. Despite pleas by local residents and conservationists to extend a two mile buffer zone established earlier by the Department of the Interior, the Secretary refused to widen the area, arguing that the zone had already cost the government 100 million dollars in bonuses and an additional 500 million dollars in future royalties.¹⁶ On January 28, 1969, the first successful well on Tract 402 suffered a severe blowout during the withdrawal of a worn drill bit. Although the well was quickly capped, the increased pressure forced large quantities of oil through fissures in the sea's floor, and within a few days oil covered a large portion of the two hundred square mile channel.¹⁷ A second seepage expanded this area to include four hundred square miles of the Pacific Ocean and forty miles of white sand beaches.¹⁸ It was not until the damage was evident that the Secretary of the Interior heeded the earlier warnings and admitted the lack of knowledge concerning local geological conditions.¹⁹ Meanwhile, suits

¹¹Edwards 23.

¹²Nanda 402-03. In considering the extent of the threat, one should not ignore the 150 ships lying on the floor of the Atlantic off the U.S. coast. Like ghosts returning to haunt the living, the five million barrels of oil contained within them have been blamed for recent pollutions of Virginia, New Jersey, and Cape Cod beaches. *Id.* at 403.

¹³Note, *Continental Shelf Oil Disasters: Challenge to International Pollution Control*, 55 CORNELL L. REV. 113 (1969) [hereinafter cited as *Oil Disasters*]. The high bids which were accepted by the federal government as an aggregate sales price totaled 603,204,284 dollars. *Channel Sale Swamps Offshore Records*, 66 OIL AND GAS J., Feb. 12, 1968, at 66.

¹⁴*Oil Disasters* 113. A four-company group of bidders, headed by Union Oil Company, captured single-lease honors at a cost of 61,418,000 dollars. *Channel Sale Swamps Offshore Records*, *supra* note 13.

¹⁵*Oil Disasters* 113.

¹⁶*Added Santa Barbara Sale Curbs Rapped*, 65 OIL AND GAS J., Dec. 4, 1967, at 40.

¹⁷N.Y. Times, Feb. 6, 1969, at 19, col. 1.

¹⁸See TIME, Feb. 14, 1969, at 23.

¹⁹67 OIL AND GAS J., Feb. 17, 1969, at 43.

exceeding one billion dollars had been filed against both the United States and Union Oil Company.²⁰

It would be encouraging to believe that lessons have been learned from the *Torrey Canyon* and Santa Barbara incidents. Yet, reliable evidence to the contrary exists. Offshore drilling continues at even greater depths, and increasing numbers of supertankers—heavily laden with oil—continue to ply the seas. All of the indicators point to the fact that the problem of oil pollution is here to stay, and since progress cannot be impeded, the only means of effective regulation must lie in the law.

EXISTING REGULATORY MEASURES

The United States is signatory to a number of international conventions concerning oil pollution. However, none of these agreements provide the control necessary for effective protection. Foremost among the multilateral instruments is the 1954 Convention for the Prevention of Pollution of the Sea by Oil.²¹ The agreement:

- Defines prohibited zones . . . in which discharges of oil are regulated.
- Requires logging of oil discharges and losses.
- Obliges signatory governments to promote the installation of oil-receiving facilities in their ports.
- Sets procedures for apprehension and prosecution of vessels which violate the provisions of the Convention.²²

Though all nations probably share a common interest in the treaty's objectives, conflicting domestic policies frequently discourage the adoption of its provisions. In such situations, the economic advantages gained by attracting ships to a nation's registry may induce the nation to provide less stringent regulatory measures than those prescribed by the 1954 Convention.²³ Similarly, the abstract nature of long-range interests often yields to immediate economic expediency, and thus leads to nonobservance by individual ships.²⁴ The frequency of such deliberate oil discharges had been noted above,²⁵ and it is virtually impossible to

²⁰See N.Y. Times, Feb. 19, 1969, at 1, col. 3.

²¹May 12, 1954, [1961] 3 U.S.T. 2989, T.I.A.S. No. 4900.

²²Edwards 24.

²³Nanda 405.

²⁴*Id.*

²⁵See note 12 & accompanying text *supra*.

identify the specific offender. Finally, the 1954 Convention suffers the weakness common to all treaties in that it is applicable only to ships registered by the signatory parties.

The 1958 United Nations Conference on the Law of the Sea produced three instruments which may lay the groundwork for more effective control in the future. The first of these agreements is the Geneva Convention on the High Seas.²⁶ In obliging each nation to promulgate regulations to prevent pollution "by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil,"²⁷ it provides some implementation for the 1954 Convention.

The second agreement which grew out of the Conference is the Convention on the Territorial Sea and Contiguous Zone.²⁸ As applied to the United States, this instrument permits the federal government to exercise controls necessary to prevent violations of its sanitary regulations within its territory or territorial sea to a point extending twelve miles from the baseline from which the territorial sea is measured.²⁹ In the event this treaty is self-executing,³⁰ it would sanction enforcement of the Oil Pollution Act of 1924³¹ anywhere within a twelve mile zone adjacent to the coast of the United States.

In an attempt to cope with the problems of offshore drilling, the Conference also drafted the Geneva Convention on the Continental Shelf.³² While endeavoring to lend some international recognition to the occupation of the shelf, it is rapidly becoming inadequate in its definitional provisions. This fact is amply illustrated by its "exploitability" test in determining what constitutes the continental shelf.³³ Today, offshore drilling in depths up to five thousand feet is

²⁶April 29, 1958, [1962] 2 U.S.T. 2313, T.I.A.S. No. 5200.

²⁷*Id.* at 2319.

²⁸April 29, 1958, [1964] 2 U.S.T. 1607, T.I.A.S. No. 5639.

²⁹*Id.* at 1612.

³⁰There appears to be some question on this point, and in an effort to resolve any doubts, the President has recommended specific implementing legislation for the Convention. Edwards 25.

³¹Act of June 7, 1924, ch. 316, 43 Stat. 604, *as amended*, 33 U.S.C. §§ 431-37 (1964). "Under amendments contained in the Clean Waters Restoration Act of 1966, the term 'discharge'—originally intended to cover any escape of oil—is defined as 'grossly negligent, or willful spilling of oil.' Because of its wording, the 1924 Act is extremely difficult to enforce." *Oil Disasters* 121.

³²April 29, 1958, [1964] 1 U.S.T. 471, T.I.A.S. No. 5578.

³³For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of

becoming feasible. In the future, as all parts of the ocean floor become "exploitable," permanent platforms in the North Sea may not only threaten the quality of the water but may also jeopardize navigation in general.³⁴

POSSIBLE AVENUES FOR IMPROVEMENT

Presently, one of the major obstacles to the effective control of oil pollution lies in the lingering concept of the supremacy of the law of the flag on the high seas. The widespread use of flags of convenience accentuates this problem by frequently leaving the real victim of a pollution disaster at the mercy of a nation whose interests are motivated more by economics than ecology.³⁵ In such situations, it has been suggested that the doctrine of exclusive jurisdiction should yield to a principle conferring concurrent jurisdiction upon both the nation of the flag and the injured nation.³⁶ Besides affording a sympathetic tribunal to the coastal nation, such an approach would avoid the serious political consequences which might flow from extreme measures of self-help in the event of a pollution crisis.³⁷

With such a jurisdictional concept serving as a foundation, the

the territorial sea, to a depth of two hundred metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of said areas.

Id. at 473.

³⁴*Oil Disasters* 125-26.

³⁵See Nanda 404-05. The International Court of Justice pointed out in an advisory opinion that despite the foreign ownership of many vessels registered in Liberia and Panama, these two countries are among the eight "largest ship-owning nations." Advisory opinion on Constitution of the Maritime Safety Committee of the IMCO, [1960] I.C.J. 150.

³⁶*Oil Disasters* 126. Though such an approach might be suggested by the S.S. "Lotus," [1927] P.C.I.J., ser. A, No. 10, it has since been dispelled by Article 6 (1) of the 1958 Geneva Convention on the High Seas which provides:

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas.

Convention on the High Seas, Apr. 29, 1958, art. 6, para. 1, [1962] 2 U.S.T. 2312, 2315, T.I.A.S. No. 5200.

³⁷The political consequences potentially arising from the jurisdictional complexities of the *Torrey Canyon* are staggering. The ship was American-owned, Liberian-registered, manned by an Italian crew, and on a single-voyage charter to the British Petroleum Company. It went aground in international waters and, after being abandoned by the owners, was destroyed through the combined efforts of British naval and air forces. Finally, it was contracted for salvage to a Dutch company. See generally COWAN, *supra* note 7 and Nanda 401. The situation has been aptly termed "a law professor's examination question dream." *Oil Disasters* 117 n.29.

existing law could be used as a basis for more effective agreements in the areas of prevention, compensation, and enforcement. Within this first class might fall comprehensive treaties modeled after the Convention on the Territorial Sea and Contiguous Zone or instruments which extend the prohibited zones under the 1954 Convention.

A multilateral convention assigning sealanes between various international ports of call would also be worthy of consideration.³⁸ Similarly, treaties requiring the installation of more sophisticated navigational aids or establishing rigid standards for ship construction might further serve to reduce the hazards of collisions at sea.³⁹

The problem of compensation can be divided into two distinct subclasses—remuneration and restoration. Efforts to afford the injured nation just compensation in the former area could take the form of treaties prescribing strict liability for oil spills, except when necessary to save human life.⁴⁰ In order to assure that adequate funds are available, it has been suggested that nations require spillage insurance as a prerequisite to registration under their flags.⁴¹ Alternatively, the establishment of an international fund to which shipbuilders or shipowners would contribute in a method akin to an international tax might also be feasible.⁴² The problem of restoration could best be handled by a multilateral instrument founded on one principle—cooperation. By assuring the availability of the latest discoveries in absorbents and chemical dispersants, no state would fear the futility that Great Britain experienced following the *Torrey Canyon* disaster.⁴³

Regardless of the methods by which the problems of prevention and compensation are approached, they will prove ineffectual unless some competent agency is bestowed with enforcement authority. The most obvious body to accept this responsibility would be the Intergovernmental Maritime Consultive Organization (IMCO), under whose auspices the 1954 Convention was prepared. At present, however, this specialized agency of the United Nations has no such authority, and its miniscule budget prevents it from exerting more than a minimal influence on such a weighty problem.⁴⁴

³⁸Nanda 421-22 & n.196.

³⁹*Id.* at 420-22.

⁴⁰*Id.* at 424.

⁴¹*Id.*

⁴²*Oil Disasters* 128.

⁴³See note 10 *supra*.

⁴⁴Edwards 26-27.

The possible solutions outlined above are neither exhaustive nor totally adequate in themselves. Yet, they do provide a step in the right direction. In order to meet the complexities of this changing world, man must not be content to indict technology itself, for in so doing he is but indirectly blaming his own inability or unwillingness to secure cooperation in the international community. If he is not to fall victim to his environment, he must be willing to act and to compromise within a legal framework.

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